

Relying on 35 U.S.C. §103(a), the Examiner has rejected the subject matter of claims 20 and 22 as obvious over Kotschner et al. in view of Te. Applicant respectfully traverses the rejection and requests reconsideration.

Relying on 35 U.S.C. §103(a), the Examiner has rejected the subject matter of claims 24 and 25 as obvious over Caspall in view of Hu. Applicant respectfully traverses the rejection and requests reconsideration.

Relying on 35 U.S.C. §103(a), the Examiner has rejected the subject matter of claim 26 as obvious over Caspall in view of Hu and further in view of Te. Applicant respectfully traverses the rejection and requests reconsideration.

It is evident that Applicant's invention is decidedly different from the teachings of the cited patents. Accordingly, the Examiner has not established a prima facie case of obviousness.

Applicant herein incorporates by reference its previous arguments as applicant respectfully submits that the examiner has misconstrued the structure of the present invention as well as the structure of the cited prior art.

Applicant submits that Kotschner and Te lack the features of the invention as claimed and Caspill and Hu lack the rounded features of the claw hammer surface.

There are several advantages for having the side and bottom side nail loading characteristic of the present invention. The Kotschner hammer requires that the hammer be raised almost 90 degrees to load a nail on the top side surface. After the nail is loaded, the angular striking motion can cause the nail to fling away and possibly hit a bystander. In addition, the repetitive arm motion is cause excessive stress to the forearm and wrist from raising the hammer to load the nail. The present invention eliminates this excessive strain on the forearm and wrist muscles as the hammerhead can stay down and simply be turned for loading the nail in

place. In addition, the combination of the magnets and grooves on the side surfaces of the present invention enables the surface to be used as an anvil for straightening nails out.

A significant benefit of the claw rounded feature is the ability to remove nails by rolling the hammer head sideways for better leveraging.

Clearly, in the absence of any suggestion to or of any teaching whatsoever of how one skilled in the art would attempt to combine the features of cited art to produce the present invention, one skilled in the art would certainly not find ample motivation to use the cited features of the cited art to arrive at the present invention.

Applicant respectfully submits that the Examiner's legal reasoning is flawed. The knowledge of those skilled in the art is derived from the prior art, not from the Examiner's mental impression of what those skilled in the art might or might not know. It is the law as evidenced in Graham v. John Deere that is controlling. As enunciated by the Graham court, §103(a) requires a comparison of the claimed invention with the teachings of the prior art. Otherwise, the PTO could simply say "I'm skilled in the art. That claim is obvious." The rules and the law require that the Examiner point out where in the prior art lies Applicant's claimed invention in the context of what those skilled in the art know. If it is not there, the public is not in possession of the invention, and, therefore, a rejection under 35 U.S.C. §103(a) will not lie.

There is no reasonable intrinsic or extrinsic justification for the proposed combination or modification. A prima facie case of obviousness has not been made.

Nevertheless, in order to advance the case to allowance, Applieant has amended claims to increase their specificity of language. New claims 27-32 are patentable over the art of record. Accordingly, withdrawal of the rejection is respectfully requested.

LONG FELT NEED AND EVIDENCE OF POTENTIAL COMMERCIAL SUCCESS

Applicant attaches herein copies of certificates of recognition/award from two events, one in 2003 and the other in 2005. Both awards were for the present invention. In January 2003, applicant received an award from the Home Builders Institute recognizing his invention in the “Blue Thumb” Nailing Competition. In September 2005, applicant received the award for the best potential short form product – Smart Hammer.

Certainly, these awards recognize the novelty and benefits of the present invention over prior art hammers. Applicant was competing against hammers made from large well known manufacturers such as Stanley Tools and other national brands.